D10

Sectt. II-27—45,006—19-10-39.

Revenue (1940) Department.

MS SERIES

G.O. No., 1985

Dated 20—8—1941

[Despatch Abstract.]

Assessment - Land Revenue - (South Kanara) - Coondapur Taluk

- Holding No.1 - Arrears - From fasli 1342 to 1348

Suspension until the end of Fasli 1350 - Sanctioned.

Sectt. II-74—20,006—6-10-38.

Department.

C. No. 1519 E 1/40

List of records put up.

Number.	Date.	Department.	Signature of Clerk putting up the paper.	Signature of Clerk removing the paper.
Geo	1027	23.4.40	~~There are 502 rebd tickets~~	~~Sent to Public~~
Geo	46	8.1.40		& 1833E
"	3278	22.12.38		& 1844-TS sent
"	3080	1.12.38		& 2078
"	1870	15.9.37	There are no papers in Cor.	
"	614	17.3.37	1803E/40 - Transfer	
"	227	3.2.36	slips for this & for	
"	1765	5.9.34	this new series 1987 NW	
"	1416	17.3.34	& 2076. Geo have been	
"	267	9.2.34	sent to the Rlys	
~~MLJ VR~~	~~1938~~		& 2078	
			& 2217 Rlys to legal ms 5782.	
			& 157a.	

C.F. 31—14,000—7-7-37.

Revenue **DEPARTMENT.**

CURRENT No. 1519 E

Received 17 JUL 1940 19 *Registered* 17-7-40 19

Subject:

Assessment - Land Revenue - (South Kanara) - Coondapur Taluk - Mudur village - Holding No.1 - Arrears - Suspension - Requested

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Reference. No. C. 2349/40.2.

Station Madras, *Dated the* 12th July 1940.

From

S. Venkateswaran Esq.,I.C.S.,
Secretary,
Board of Revenue.

F. W. Stewart Esq.,C.I.E.,M.C.,I.C.S.,
Commissioner of Land Revenue.

Read the following.-

Rp.19-2-40 (A) Again G.O.No.Ms. 3080 Rev., dated 1--12--38.

Letter from M.V. Subramanyam Esq.,M.A.,I.C.S., Collector of South Kanara, Ref.C.No..3812-39-A.5 dated 21st March 1940.-

ibid In G.O.No. Ms. 3080, Revenue Department, dated 1-12-38, the Government approved of the proposal of the Board of Revenue to suspend the collection of the arrears of land revenue relating to faslis 1342 to 1347 on Holding No.1 of Mudur village, Coondapur Taluk, till the end of Fasli 1348. I solicit a kind perusal

Rp-4-40 (H) of this office report Ref.C.No. 4121-38-A.5 dated 24--8--38

and

and the various reports and orders on the subject referred to therein. Including the arrears due for fasli 1348, the total amount due on the holding comes to Rs. 5355-2-6. The holding stands registered in the names of the minors, now aged about 13 and 10 years respectively.

2. The Liquidator of the Laxmi Forest Company which holds a mortgage decree has proceeded against the properties in the Subordinate Court, Mangalore, and the sale, after a number of adjournments, stands posted to 27-3-40. It is understood that the chances of the sale becoming a success are remote. The Liquidator is in fact positive that it will not be a success. I, therefore, recommend that the collection of the arrears for fasli 1342 to 1348 amounting to Rs. 5355-2-6 may be suspended till the end of fasli 1349

3. In para 2 of G.O.No.Ms. 3080, Revenue Department, dated 1.12.38 the Government agreed with the view expressed by the Government Pleader, Mangalore, that the Government cannot claim the arrears of land revenue from the sale -- proceeds of the property in Civil Court. The present Government Pleader of Mangalore however says that this can be done. A copy of his letter Ref.No.A. 136-40 dated 6-2-40 is enclosed. I solicit instructions whether the view of the present Government Pleader may be accepted.

Enclosure.

Letter from M.K. Nambyar Esq.,LL.M.(Lond.) Barrister-at-Law, Government Pleader and Public Prosecutir, Mangalore to the Collector of South Kanara, Ref.No.A.136-40 dated 6th February 40.

Assessment - Land Revenue - Coondapur Taluk - No.22 Mudur village - Holding No.1 - Arrears - Suspension of collection.

Your Ref.A.5.3812-39 dated 1--2--1940.

I am enclosing herewith the letter of Mr. Moosaba. It is seen that the sale is yet to be held.

2. For arrears of assessment the Government hold a first charge. When the property is sold in Court auction, it is open to the Government to apply to the court and ask for payment of the proceeds of the sale in satisfaction of the arrears of land revenue. There is a recent decision of the High Court which authorises this procedure by application, without recourse to the filing of a suit. In that particular case the application was for payment of income-tax; income-tax is not a first charge on land, like land revenue; and the High Court opined that where execution was taken out in a simple money decree, income.tax had priority as a debt due to the Crown. Here now execution is taken out in a mortgage decree; but as land revenue is a first charge the Government is entitled to priority over the decree-holder.

3. If you should think of adopting this course, it would be difficult to suggest how many years suspension could be recommended, as the amount that could be recovered from court depends on the amount realized at the auction sale.

iii

Board's Refce. thereon No.C. 2349-40-1 dated 30-4-40 to the Collector of South Kanara.

The Collector is requested to report the result of the sale held on 27-3-40.

2. The Collector is also requested to ascertain from the Government Pleader, Mangalore whether the decision of the High Court referred to by him was reported if so to report the page of the law report in which it was published.

Letter from Sri Rao Bahadur V. Ponnuswami Pillai, Collector of South Kanara, Ref.C.No. 3812-39-A.5 dated 5-6-1940.

Assessment - Land Revenue - Coondapur Taluk - Mudur village - Holding No. 1 - Recovery - Further information Reported.

Ref. C.No. 2349-40.1 dated 30--4--40 from the Board of Revenue.

The sale was not held on 27-3-40 but stands adjourned to 31-7-40.

2. The Government Pleader, Mangalore, states that the decision referred to by him is reported in 1938 (1) M.L.J. 351 F.B.

Reference.-

Submitted to the Government.

2. The Board requests that the Government may be pleased to suspend the collection of the arrears till the end of Fasli 1350. It also requests that the Collector may be allowed to claim the arrears from the Court in view of the opinion expressed by the present local Government Pleader.

for Secretary.

To the Secretary to the Government,

Revenue Department.

M.K.G/13.7.

Rev. Dept

Assessment - Land Rev - (South Kanara) - Coondapur Tk. - Mudur village - Holding No 1 - Arrears - Suspension - Requested

From the Bd of Rev. Ref No C. 2349-40 dt. 12-7-40.

To w.s.

Please see the Bd's Refce at Pp 1-4 C.F. The file relates to the land revenue arrears due for fasli's 1342 to 1348 amounting to Rs 5355-2-6 due on holding No 1 of Mudur village, Coondapur Tk., South Kanara Dt. For a brief history of the case, perusal is requested of the notes at Pp 7- of Go. 3080 Rev., dt., 1.12.38. In para 1 of the Go. ibid sanction was accorded for the suspension of the arrears relating to fasli's 1342 to 1347 till the end of fasli 1348 & in para 2 of the Go. the Govt agreed with the view expressed by the Govt Pleader, Mangalore, that the Govt could not claim the sale proceeds when the property was brought to sale by the liquidator of the Laxmi Forest Company or by the assignee of the mortgage decree over the property. The present Govt Pleader of Mangalore is of the opinion that this can be done & his opinion which is at Pp 2-3 C.F. is reported to be based on

(1938)(1) M.L.J. 351 F.B. In view of this opinion, the Bod requests that the Colln may be allowed to claim the arrears from the Court & it also requests sanction for the suspension of the collection of arrears till the end of fasli 1350. For orders whether the Bod's later recommendations must be approved & whether the remarks of Legal will be restricted on the former recommendation. The file may also be sent to Legal to obtain the remarks

Publish

p4 c5

p4 cF

It is reported that the sale of the properties at the instance of the Liquidator has been adjourned to 31.7.40.

* Legal's case in this - p 30 80 1-12 38 was sent p 12-13(A)

Re 22/7

K 23.7.40

The case quoted by the Govt pleader is only analogous & does not deal directly on the point now at issue. Legal may be consulted.

24/7

S

Rw 24/7

Legal

Fin.

Rel wor 1519 E40 24.7.40 with M.L.J. 1938 Vol

Re 24/7

Legal Department

The case of (1938) (2) M.L.J.351 is clearly distinguishable. In that case, the question was one of

ASSISTANT SECRETARY I
5214
LEGAL DEPARTMENT

priority between a Crown debt (income-tax) and an unsecured debt owing to a private party, whereas here, the liquidator holds a mortgage decree. The position is as set out in paragraph 1 of this Department's note at page 12 of G.O.No.3080 Revenue dated 1st December 1938.

K. M
26/7/40

Ra
27/7/40

S

Legal wo 5214. 1
27/7/40.

ASSISTANT SECRETARY TO GOVERNMENT
29 JUL 1940
FINANCE DEPT.

Finance (Accts)

The history of the case is set out in the notes on pages 7-10 and its legal aspect discussed on page 12 of G.O. 3080 Rev. dt 1-12-38.

2. In the circumstances stated by the Collector of South Kanara on pages 1-2 ante, the Board recommends the suspension till the end of Fasli 1350 of the arrears of land revenue on Holding No 1 of Mudur village of Coondapur Taluk (Revl apparently accepts the recommendation.) submitted that this dept may agree.

3. With reference to the question whether the Govt can claim the arrears of land revenue from the Sale proceeds of the property by the Civil Court, Legal reiterate

their previous answer which is in the negative, even though the present Govt Pleader, Mangalore has held a contrary view. Finance may perhaps suggest that the Advocate General may be consulted

2. The case may be returned to Revenue

para 1 on page 12 of Go 3080 Rev 1-12-38 (A)

page 3 cf

2/8/40

2.8.40

16 AUG 1940

-5 AUG 19..

Fri no 2761 7 Aug

3/8/40

Tous.

Please see the notes from plaint re request the suspension of the arrears of basis 1342 to 1048 till the end of basis 1859. a draft order is submitted for approval

2. Orders are requested on the above suggestion of Fin that the Advocate Gl may be consulted on the other proposal of the Govt viz. that the Collr should be asked to claim the arrears from the sale proceeds of the property in the civil court. Perhaps the remarks thereon may be invited on the suggestion of Fin. If it is decided to address the Advocate Gl a separate file will be opened with relevant extract of the Govt Prof. ~~Or is not known whether the Govt Counsel may be~~

See above

page 4 cf

the Sale of the property fixed for 31.7.40 actually took place Perhaps a decision on the qn will be useful for any subsequent Case that may arise)

18
7/8-40

The Government may agree to the proposal to postpone the collection of the arrears of land revenue which are due from the minors till the end of fasli 1350.

As to the proposal to prefer a claim against the sale proceeds if any, realised Finance Department suggest a reference to the Advocate General.

In paragraph 2 of his letter on page 2 c.f., the Collector states that thd liquidator is positive that the sale will not be a success. It is extremely unlikely therefore that there will be any sale proceeds in the Civil Court to make a claim against. The Legal Secretary is of opinion that such a procedure would be infructuous and points out that the decision on which the South Kanara Government Pleader bases his opinion must be distinct from the present circumstances. It is extremely unlikely that any Civil Court will accept a claim by Government for arrears of revenue against the proceeds of land brought to sale by a mortgagee.

It must be remembered that the arrears of land revenue continue to be a charge on the land even after the Court's sale and that this fact will have seriously affected the price realised by the property. If in such circumstances the Government could also prefer a claim for preference in respect of such sum as the sale of the property produced, the mortgagee would be doubly penalised. In the circumstances it seems unnecessary to cons the Advocate General on this point.

bvr.
10/8.

cc: C.S.
Cook M. X.J
Vol I - 1958.

A ~~w~~ Law conflicting opinion from Local Govt: Pleaders should be obtained by ~~has~~ letter for an authoritative opinion from the Advocate General

Draft
bvr
12/8

12/8

To W.S.

A draft order sanctioning the suspension of the arrear till the end of fasli 1360 & a draft memo to the Govt Solicitor are submitted for approval. Perhaps Legal may see the draft memo before issue. (After issue of the order a separate file will be formed with the memo & relevant extracts/copies.)

Done. cc-1803 E
Lett.
Revenue-1519 E402
AMR 15-8-60

A31 5827

14/8.

bvr
15/8

15/8
14.8.60

Legal

Legal Department

The memorandum to the Advocate-General is in order.

K. VR
16/8/40

Rec
16/8/40

Rec

Issue
16/8/40

DRAFT FOR APPROVAL.

Date. Initials.

SUBJECT :—

When received for fair copying ..		
When copied ..		A
When examined ..		
When signed ..		
When despatched.		

READ AGAIN Gen. No. 3080 Rev., dated 1-12-1938 (A) 19

" " " " 19

READ *ALSO* :—

C No. 1519 E/40 From the Bd of Rev. Ref. No. 2349-40.2; dated 12-7-1940 CF

" " " " " " 19

" " " " " " 19

Order Ms. / ~~Resolution Rout.~~ No. 1987, dated 20/8/40 19

I

1 of Gen. 3080 Rev. for 1938 (A)
11238

The Govt approve the proposal of the Bd of Rev. that the collection of the arrears of land revenue relating to faslis 1342 to 1348 on holding No. 1 of Nudur village, Coondapur taluk South Kanara Dt., should be suspended till the end of fasli 1350.

2. Separate orders will issue on the Bd's proposal that the collr should be asked to claim the arrears from the sale proceeds of the property in the Civil Court.

for 2 CF

Board's recommn. for CF

file spmo C No. 1803 E/40

To

The Bd of Rev.

Dy Sec.

Sec 13/8

B 14.8.40

14/8

OTP

bw 15/8

Recd